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IN THE

Supreme Court of The United States

OCTOBER TERM, 1965

No. 830

GRAND RIVER DAM AUTHORITY, a Body Corporate,
Petitioner,

vs.

NATIONAL GYPSUM COMPANY, a Corporation,
Respondent.

BRIEF OF RESPONDENT OPPOSING CERTIORARI

Remington Rogers,
Counsel for respondent

1311 Petroleum Club Building
Tulsa, Oklahoma—74119

Of Counsel:
Gerard K. Donovan
Dan A. Rogers

1311 Petroleum Club Building
Tulsa, Oklahoma — 74119

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IN THE

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GRAND RIVER DAM AUTHORITY, a Body Corporate,
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Respondent.

BRIEF OF RESPONDENT

Introduction.

In conformity with Rule 40, Respondent shows

(a) Since the petition for writ of certiorari was filed, the opinion of the Court of Appeals has been published. See *Grand River Dam Authority* v. *National Gypsum Company*, 352 F. 2d 130. (Now in advance sheet #2 dated December 20, 1965)

(c) Petitioner has quoted a part of *Oklahoma Constitution, Article XVIII, Section 7.* We quote the entire section (Appendix 3).

Respondent relies on and will cite Constitutional and statutory provisions as follows:

Oklahoma Constitution, Art. II, Sec. 31	Appendix 1
Oklahoma Constitution, Art. IX, Sec. 18(b)	Appendix 2
Oklahoma Constitution, Art. XVIII, Sec. 7	Appendix 3
12 O. S. §1651, §1654 and §1655	Appendix 4
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(e) Respondent supplements petitioner's statement of the case by the following additional facts necessary to a clearer understanding of the issues. Petitioner was created in 1935 as alleged by petitioner (Pet. p. 3). By that statute, it was authorized to issue $15,000,000.00 in revenue bonds. In 1941, the Act was amended three times, all consolidated in House Bill 431, slightly changing the District boundaries and eliminating the original prohibition against retail marketing. (Amendments noted but not pertinent to issues.) In 1949, the Act was substantially amended (Senate Bill 71, Appendix 10). The boundaries were slightly changed. The powers, rights and privileges of the District, as set forth in Section 862, were reenacted. The authorized bonded indebtedness was increased to $25,000,000.00 and an additional $25,000,000.00 authorized with the provision (Section 4) that the Authority

should use not more than $7,000,000.00 of the bond proceeds to acquire a steam powered electric generating plant constituting a part of the Oklahoma Ordnance Works.

Until petitioner acquired and commenced operating the steam power plant, it had no steam for sale. It had untreated water from the river and lake for use by municipalities and for irrigation purposes, but it had no treated water. With the acquisition and operation of the steam power plant and related facilities, the Authority, for the first time, was producing steam and had industrial water available for sale. This was the status of petitioner when it entered into the contract involved in this law suit. This contract was elaborate, and apparently carefully drawn. (R. pp. 6 to 19, supps. as to steam R. 20, 21). As appears from the recitals therein, (R. 6), respondent was induced to plan, construct, maintain and operate an industrial plant adjacent to petitioner's steam plant property. Petitioner had numerous municipal customers for electric energy.

To generate electricity at the Oklahoma Ordnance plant, petitioner had to produce quantities of steam. At that time petitioner had no market for this steam. It was a waste by-product, surplus to its needs, and respondent was its first customer. (R. 64)

Since 1949 the Grand River Dam Authority Act was amended in 1955 (Appendix 11) and in 1957. (Appendix 12) The opinion of the Court of Appeals adequately summarizes the pleadings, quotes verbatim the salient parts

of the contract and details acts showing petitioner's administrative construction of its powers. To avoid repetition respondent adopts the same as part of its supplemental statement of the case.

Summary of Argument—Certiorari Should Not Issue Because

The ruling complained of does not impair petitioner's power to establish reserves. It merely classifies two of petitioner's accounts and correctly applies thereto the statute specifying the revenues to establish same. Certiorari is not an appropriate remedy when no effective decision can result.

Petitioner had the power to make the contract. The Constitution did not prohibit or even relate to petitioner's power to fix rates by contract. The statute did not prohibit petitioner from so doing but gave petitioner plenary power to select methods of attaining statutory objectives. The rates are valid.

The direful consequences of the decision forecast by petitioner cannot be affected by certiorari. If not imaginary, they flow from petitioner's own violation of the law, and petitioner has adequate, appropriate and effective remedies.

THE ARGUMENT

Petitioner has grouped its reasons for obtaining certiorari under three lettered headings. We respond to reason A (Pet. p. 8), as follows:

PROPOSITION I

THE RULING OF WHICH PETITIONER COMPLAINS WAS INVITED; CORRECTLY CLASSIFIES TWO OF PETITIONER'S ACCOUNTS; CORRECTLY CONSTRUES THE STATUTE UNDER OKLAHOMA LAW; CERTIORARI WILL NOT ISSUE TO REVISE THE SAME.

Petitioner emphasizes (Pet. pp. 7 and 9) that its first reason is its principal basis for claiming any right to certiorari. This first reason does not relate to the decision of the Court of Appeals, but is based only on a ruling in the opinion.

The Ruling. Petitioner fails to cite us to the particular ruling to which it objects. If we understand the contention correctly, the ruling appears as follows:

Section 8 of the Grand River Dam Authority (82 O. S. 868, Appendix 8) authorizes petitioner to establish rates and charges for purposes specified in four lettered sub-paragraphs. Only sub-paragraph (d) is involved herein. It reads in part:

> "(d) To fulfill the terms of any agreements made with the holders of such bonds and/or with any person in their behalf. Out of the revenues which may be received in excess of those required for the purposes specified in sub-paragraphs (a), (b), (c)

> and (d), above, the Board shall establish a reasonable depreciation and emergency fund, . . ."

Applying this sub-paragraph to petitioner's contingency and depreciation accounts, the Court of Appeals said (Appendix to petition A-13, last paragraph; also 352 F. 2d 132, L. C. 137):

> "It should be noted that Section 868, *supra*, permits the establishment of depreciation and emergency funds only out of revenues . . . in excess of those required for the purposes specified in sub-paragraphs (a), (b), (c) and (d) . . .".

The Issues. Petitioner complains that this ruling was volunteered by the court *sua sponte*, and that petitioner has had no hearing thereon. Respondent says the ruling was invited by petitioner's defense. Petitioner says the ruling challenges its right to establish accounts under its bond indentures. Respondent says the ruling merely classified these two particular accounts, regardless of any bond indenture, and that the ruling is a correct construction of the statute. Petitioner asks certiorari because the ruling was outside of the issues. Respondent says certiorari will not issue to reverse *obiter dictum* and could not give petitioner the relief petitioner seeks.

A. THE RULING WAS INVITED BY PETITIONER'S DEFENSE.

Petitioner relied on the particular defense that because of insufficiency of its revenues, it had the power to breach its contract with respondent.

1. *Respondent raised no issue as to the sufficiency of petitioner's revenues.* Respondent sued on a written

contract; alleged breach thereof by petitioner; prayed recovery of payments made in excess of the contract rates; and for specific performance of the contract. (Complaint, Rec. 1). The sole issue was that the contract rates were valid, and that petitioner had no power to alter the same. (Note 1).

2. *Petitioner's defense injected issue of revenue sufficiency.* Petitioner admitted the contract and its collections in excess of the contract rates. (Answer, Rec. 31). By way of avoidance, petitioner contended that under particular circumstances, it would have unilateral power to change the contract rates; that these particular circumstances had occurred in 1960 and 1964. The particular circumstance on which petitioner relied was that, in those years, its revenues had become insufficient to meet the objectives of the statutory sub-paragraphs (a), (b), (c) and (d). Insufficiency of revenue was the very foundation of petitioner's asserted power to alter the rates. It was not the Court, but the petitioner, who injected the question of the sufficiency of its rates.

3. *Petitioner failed to establish facts necessary for avoidance.* Petitioner's defense was predicated on a show-

---

Footnote 1. Petitioner implies that respondent had at some time changed its position or had tendered some different issue. Thus petitioner says (Pet. p. 5):

> "When it became apparent that respondent's claim was based solely on the question of petitioner's power under any circumstances to make any changes in the rates . . ."

Petitioner also says (Pet. p. 16):

> "When respondent took the position in the District Court that the only question involved was the legal right of petitioner to change rates, . . ."

This was the only issue raised by the complaint. Respondent has never taken any other position.

ing that its rates had become inadequate. It submitted no proof that this particular circumstance had, in fact, occurred. It offered proof (Affidavit R. 32), that its Board of Directors had adopted resolutions (Rec., pp. 33 and 41), establishing new rate schedules in 1960 and 1964, based on findings of petitioner's staff. (l. c. R. 35, last two paragraphs and R. 43, 3rd and 4th paragraphs). This, of course, was rank hearsay. The Court of Appeals properly ignored the same.

Since the ruling was part of the Court's response to petitioner's contention that its rates had become insufficient, it was invited by petitioner, and was not "volunteered" by the Court of Appeals.

B. THE RULING CORRECTLY CLASSIFIES PETITIONER'S DEPRECIATION AND EMERGENCY ACCOUNTS.

1. *The Statute.* All agree the controlling statute is Section 8 of the Grand River Dam Authority Act, 82 O. S. 868, (Appendix 8). Therein the Legislature authorized petitioner to establish rates and charges sufficient to produce revenues adequate for the purposes set forth in four lettered sub-paragraphs. No question is presented as to sub-paragraphs (a), (b) and (c). The issue arises from the language of sub-paragraph (d), (Footnote 2),

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Footnote 2. Petitioner quotes section 8 in its appendix and quotes a portion of the statute (Pet. p. 9). omitting from sub-paragraph (d), the second sentence thereof. We shall avoid confusion by referring only to the complete text (appendix 8). Subparagraph (d) states two purposes as follows:

In the first sentence, petitioner is authorized to establish rates sufficient to fulfill agreements with its bondholders.

In the second sentence, petitioner is authorized and directed to establish a depreciation and emergency fund, out of revenues in excess of those required for other statutory purposes.

quoted above, which authorizes, not one, but two, kinds of reserves.

2. *The evidence.* The Court of Appeals said (*Grand River Dam Authority* v. *National Gypsum Co.*, 352 F. 2d 130, L. C. 137), and petitioner does not deny, that the only evidence in the record was a tabulation of petitioner's revenues and expenses for a five and one-half year period. This tabulation (R. 58) was prepared by petitioner's chief accountant, (R. 60), and was in evidence by stipulation and without objection, (R. 60). Therein we find five columns under the heading "Requirements" which, of course, relate to the requirements of sub-paragraphs (a), (b), (c) and (d) of the statute, and petitioner's footnotes showing its authority for each of these accounts. The opinion omits these footnotes, and we therefore, refer to the tabulation itself. (R. 58).

Sub-paragraph (a) of the statute (Appendix 8) authorized petitioner to collect revenues for operation and maintenance expenses. Petitioner's first column under "Requirements" is headed "Operation and Maintenance (1)", and footnote (1) refers us to this sub-paragraph (a).

Sub-paragraph (b) of the statute authorized an account to pay the principal and interest on outstanding bonds, and sub-paragraph (c) to pay "all sinking fund and/or reserve fund payments agreed to be made . . .". The second column of the exhibit is headed "Debt Service (2)," and footnote 2 refers us to these two sub-paragraphs.

The first sentence of sub-paragraph (d) of the statute authorizes charges "To fulfill the terms of any agreements" made with the bondholders. The third column is headed "Debt Service Reserve Fund (3)" and footnote (3) refers us to sub-paragraph (d) of the statute.

There is no argument or dispute about these first three columns. Petitioner was authorized to collect revenues to pay the operation and maintenance, to pay the debt service, and to pay the debt service reserve fund, respectively, under sub-paragraphs (a), (b), (c) and (d) of the statute. The Court of Appeals did not comment on the third column and was apparently satisfied that it was duly authorized under the first sentence of sub-paragraph (d).

The fourth column is headed "Contingency Fund (3)" (The Court of Appeals deemed a contingency fund the same as an emergency fund). The fifth column is headed "Depreciation, (3)". These are the only two accounts actually involved herein. By footnote (3), both are referred to sub-paragraph (d) of the statute. Petitioner now contends, without record evidence, that these two accounts should, like the third column, be classified as required by its agreement with its bond holders. The Court of Appeals classified these last two columns as showing that petitioner had complied with the second sentence of sub-paragraph (d). Having so classified these columns, the court merely applied the statute thereto. It is not a "ruling", but this classification of which petitioner complains.

It is difficult to see how the Court of Appeals could possibly have classified these two accounts in accordance with petitioner's present contention. The second sentence of sub-paragraph (d) provides that petitioner "shall establish" a depreciation and emergency fund. Excess revenues were apparently available for that purpose. (Footnote 3) Since petitioner had the mandatory duty to establish these accounts, and had funds available for the purpose, it would seem that the Court of Appeals could hardly be criticized for its ruling.

4. There is a presumption that petitioner complied with the law. There was no duty on the part of the Court of Appeals to presume that petitioner had failed to comply with the statute. The Court of Appeals could not have classified these accounts in accordance with petitioner's present contention without imputing to petitioner a violation of its statutory duty to establish these accounts out of excess revenues.

As to petitioner's present depreciation and emergency accounts, it seems clear that the court made the correct classification that these two accounts were established under the second sentence of sub-paragraph (d). Such being the case, the *requirement* that these accounts be established out of excess revenue is not the "ruling" of the court at all. It is the requirement of the statute itself.

Footnote 3. The record shows (R. .....) that for nearly ten years from the date of respondent's contract, petitioner had made no change in its rates, and presumably had excess revenue available for these accounts. In any event, the tabulation showed that excess revenues were produced in 1961.

C. UNDER OKLAHOMA RULES OF STATUTORY CONSTRUCTION, THE COURT CORRECTLY CONSTRUED THE STATUTE AS TO THESE TWO ACCOUNTS.

Petitioner's existing depreciation and emergency accounts were the only accounts before the court. Petitioner's complaint of the ruling, however, is not limited to the court's classification of its present accounts, and the application of the statute thereto. Petitioner complains of the ruling that under the statute these two particular accounts can be established "only" out of excess funds. The proper classification of the two accounts was undoubtedly before the court. Whether these two particular accounts can be established "only" out of excess funds was a question quite unnecessary to the decision. Nevertheless, it was part of the response to petitioner's contentions and is the proper construction of the statute required by Oklahoma law.

1. *Oklahoma rules of statutory construction were correctly applied.* We do not understand that Oklahoma rules of statutory construction are very different from the rules generally followed. Thus, in Oklahoma, there is a presumption that the legislators are acquainted with local conditions and that the Legislature acted on sufficient information to meet the needs of the public.

Gates v. *Easter*, 354 P. 2d 438.

There is thus a presumption that the Oklahoma legislature was duly acquainted with the almost universal business practice of inserting provisions for depreciation and emergency funds in bond indentures; that the statu-

tory provision that petitioner "shall establish" these two funds out of excess revenue, was to meet some need. Such an express specification of the revenues for these two accounts would seem to preclude any authority to petitioner to establish these two particular accounts out of any other revenues, whether by agreement with the bondholders or otherwise. The enumeration of specific powers in a statute operates to exclude those not enumerated.

City of Tulsa, Oklahoma v. *Midland Valley R. Co.*, 168 F. 2d 252, (C. C. A. 10).

In construing the statute, we cannot omit the words "out of the revenues . . . in excess" because, under Oklahoma law, a statute should be construed, if possible, so as to give effect to it as an entirety, and to render every word, phrase and clause operative.

Simmons v. *Benson*, 206 Okl. 539, 244 P. 2d 1126.

Indeed, to construe the statute, as petitioner now contends, would defeat the express and obvious legislative purpose. It would mean that petitioner might create duplicate funds for the same purpose. The statute specifically provides that petitioner "shall establish" a depreciation and emergency fund out of excess revenues. If petitioner, by agreement with its bond holders could bind itself to create such funds for the identical purposes, and to fulfill such agreement, could fix its rates and charges for the payment thereof, petitioner would have two depreciation funds and two emergency funds, one set of each being required by the statute, and the duplicate set being required by its bond indenture. Nothing

in the Act supports a construction producing such an unreasonable result. On the contrary, the rule *"expressio unius est alterio exclusit"*, prohibits any such construction. The legislative requirement that these funds be established out of excess revenues precludes the establishment of duplicate funds or accounts for the same purposes, to be paid out of any other revenues. The ruling of the Court of Appeals that these two funds can be established "only" out of excess revenue is, therefore, the correct construction of the statute. Petitioner's failure to introduce its bond indenture was without legal consequence.

D. CERTIORARI IS NEITHER THE PROPER REMEDY NOR APPROPRIATE.

1. *Certiorari is not proper for the relief sought by petitioner.* Petitioner obviously seeks a decision that it has lawful authority to establish rates sufficient for its depreciation and emergency accounts, not under the statute, but pursuant to agreement with its bond holders. The contrary ruling, made in the three paragraphs of the opinion, *GRDA* v. *National Gypsum Co.*, 352 Fed. 2d 130, appearing at page 137, under West Publishing Company Digest [5] were in answer to, and invited by, petitioner's contention. The classification of petitioner's accounts and the Court's construction of the statute were all correct, but none of these three paragraphs was necessary to the decision that petitioner was bound by its contract. Petitioner seems to feel (Pet. p. 9) that proof that the Court of Appeals "could not, on the record in this case, have decided the question . . .", would entitle

petitioner to certiorari. Such attempt to obtain certiorari to revise *obiter dictum* is novel, quite beyond the purposes for which this Court ordinarily grants the writ; and, from the contention that the ruling was *obiter dictum*, exactly the opposite result would follow.

2. *Certiorari not appropriate.* One of the reasons why certiorari is not granted to revise *obiter dictum* is glaringly obvious in this case. Whether the provisions in petitioner's bond indenture (requiring it to collect rates adequate for its depreciation and emergency accounts) are valid, or whether such clauses conflict with the statute requiring petitioner to establish these two accounts out of excess revenue, is clearly a question not to be adjudicated unless the bond holders or their trustees are parties to the litigation. If certiorari were granted to contradict, revise or completely eliminate this *obiter dictum*, neither this Court, nor the Court of Appeals on remand, could render a judgment giving any legal effect to such adjudication. Any determination, whether affirming, modifying or contrary to the present ruling, would still be *obiter dictum*. It would still be without consequence as to the parties before the Court. It would still not be binding on the bond holders because they are not parties to this litigation.

Certiorari will not issue merely to revise or eliminate *obiter dictum* which correctly states and applies the law when no effective adjudication could follow the issue thereof.

PROPOSITION II

THE CONSTITUTION DID NOT PROHIBIT PETITIONER FROM FIXING ITS RATES BY CONTRACT. THE STATUTE AUTHORIZED PETITIONER TO DO SO, AND THE RATES ARE VALID.

A. PRELIMINARY STATEMENT.

1. *Scope.* Petitioner admits (Pet. p. 7) that except for the matters already answered under our proposition I, the remaining errors complained of would not

> "- - - ordinarily give rise to questions entitled to review - - -."

by certiorari. We agree. These issues have been decided in two courts after full hearing. Nevertheless, in its reasons B and C, petitioner restates all of the matters in controversy and urges (Pet. p. 18) that the Court of Appeals "has so far departed from settled rules of state law" as to justify certiorari. Respondent is, therefore, under obligation to answer the same.

2. *Arrangement.* The bold face headings of petitioner's reasons B, (Pet. p. 11) and C (Pet. p. 15) relate only to subordinate findings of the Court of Appeals, but are used as a tent to cover all of petitioner's contentions. We find no logical relationship between the headings and arguments under each. Some contentions are primary, and some by way of rebuttal only. Under two main headings, we shall answer both of petitioner's primary contentions and group petitioner's rebuttal under a third heading.

B. NEITHER THE STATE'S POWER TO REGULATE PUBLIC SERVICE CHARGES NOR THE CONSTITUTIONAL PROVISION CITED BY PETITIONER HAS ANY RELATION TO THIS CASE.

1. ***Petitioner's business is not subject to rate regulation.*** We are completely at a loss to understand petitioner's criticism (Pet. p. 12) of the findings of the Court of Appeals that

> ". . . Petitioner was not a 'utility' as defined in the statute . . ."

delegating to the Corporation Commission the power to regulate rates. In Oklahoma, the state's police power to regulate utility rates is exclusively vested in the Corporation Commission. For a succinct summary of the Oklahoma law, we quote from the opinion of the Court of Appeals (352 F. 2d, 130 l. c. 136), including the footnote citations:

> "The rates charged by public utilities in Oklahoma are controlled and regulated by the Corporation Commission (5). But the Authority is a 'body politic' (6), and as such it is expressly excluded from the statutory definition of a public utility (7) and its rates and charges are not subject to control or regulation by the Corporation Commission. The only limitations upon the rate making powers of the Authority are those imposed by the Legislature which appear in 82 Okl. St. Ann. §868, *supra.*"
>
> "5. 17 Okl. St. Ann. §152. (Appendix 5)
>
> "6. 82 Okl. St. Ann. §861; (Appendix 6) International Brotherhood of Electrical Workers, Local Union 976 v. Grand River Dam Auth., Okl., 292 P. 2d, 1018, 1019.

"7. 17 Okl. St. Ann. §151." (Appendix 5)

We can only add that a public institution owned and controlled by the State, such as petitioner, is not even within the constitutional definition of a company over which the Corporation has any jurisdiction. Article 19, Sec. 18 (b) of the Oklahoma Constitution provides (emphasis supplied):

> "As used in this article, the term 'Company' shall include associations and joint stock companies having any power or privileges not possessed by individuals and include all corporations *except municipal corporations and public institutions owned or controlled* by the State."

Petitioner is, therefore, expressly excluded from Corporation Commission control. The finding of the Court of Appeals that petitioner is not a utility, as defined in the statute, is incontestably correct.

2. *Constitution does not relate to petitioner's power to fix rates by contract.* Petitioner contends (Pet. p. 12 and 16) that Oklahoma Constitution Article XVIII, Section 7 (Appendix 3), precludes it from making a binding contract to furnish services at contract prices for a definite term, because such a contract would be surrendering the state's power to "regulate" public service charges. This entire article in the Oklahoma Constitution, sections 1 to 7, inclusive, deals only with municipal corporations. In Appendix 3 we quote section 7 in its entirety, not just part of the last sentence. This constitutional provision is dragged into this case only as the result of confusing and equating power to make rates

with the power of rate regulation. The State's power to "regulate utility rates" is one thing. The State's power to fix prices at which the State itself will sell electricity, water, and steam is an entirely different thing. Every utility must, of course, establish the prices and rates at which it will sell its products and services. This is the power of rate *making*. Petitioner has this power. *82 O. S. 868.* This power is an essential of the utility business. It is part of the contractual capacity of the utility. On the other hand, the power to *regulate* rates stems from the State's police power. As demonstrated above, the Corporation Commission is the sole agency of the State of Oklahoma having this power. Nowhere in the statutes dealing with petitioner (82 O. S. 862), and its powers, will the Court find any suggestion that petitioner is given any power to regulate any rates.

All of petitioner's contracts bind it to fixed rates for a definite term, in the very clause reserving the power to alter rates. Such reservation appears in paragraphs 16 and 17 of the contract between petitioner and respondent. (Contract, Rec. 6 to 19, loc. cit. 9 and 10). We quote from paragraph 17:

> "The Authority shall serve written notice upon the Consumer of any change of electric power and energy rates applicable to the Consumer sixty (60) days prior to the effective date of any such change."

Thus, for many years, by administrative construction, petitioner has repeatedly agreed that its established rates are binding upon it for a period of sixty days. No one would dream that this ordinary business provision

would constitute a violation of the Constitution, under the claim that for this sixty day term, petitioner has "surrendered" its power to "regulate" public service charges. Assuredly, if petitioner can constitutionally bind itself to furnish utility services at established contract prices for sixty days, there is nothing in the law to prevent it from so binding itself for a longer term. In neither event is the Constitution violated.

3. *Summary.* The controversy in this case relates only to petitioner's power to make rates. The constitutional provision deals only with rate regulation. Petitioner never had any power to regulate rates. It cannot surrender a power it never possessd. Its defense that its breach of contract was justified as an exercise of its power to regulate rates is without legal support, is contrary to petitioner's own settled practices, and utterly without foundation.

C. PETITIONER HAD LEGAL CAPACITY AND AUTHORITY TO ENTER INTO THE CONTRACT AND IS BOUND BY THE TERMS THEREOF.

1. *State is authorized to conduct business.* The State of Oklahoma has constitutional authority to engage in the utility business. Oklahoma Constitution, Article II, Section 31 (Appendix 1). In so doing, it exercises a proprietary, not a governmental, function.

Choctaw Brick Co, v. *Townsend,* 108 Okl. 235, 236 Pac. 46.

2. *Petitioner* is *state's agency to operate this business.* 82 O. S. 861 and 862. (Appendix 6 and 7). It has

express statutory power to contract. 82 O. S. 862 (n) (Appendix 7).

3. *The contract between petitioner and respondent was fully authorized by circumstances then existing.* In the beginning, petitioner operated only a hydro electric plant at Grand Lake, Oklahoma. By Act of 1949, petitioner was authorized to acquire the steam generating plant from the Oklahoma Ordnance Works (Appendix 10), and thus "firm up" its hydro electric power. At that time it was selling water to the Oklahoma Ordnance Works at cost. (R. 64). As a part and parcel of a transaction in which it sold an industrial site to respondent, Petitioner agreed to furnish respondent's requirements of electric energy, water, steam and compressed air. (Contract, R. 6-21). Respondent was the pioneer first to buy a site, build a plant and rely on petitioner for service. Other industries followed, and petitioner's revenues have increased accordingly.

When petitioner put in operation the O. O. W. Steam generating plant, it had to produce steam. Having no customer for steam, all operating and maintenance costs had to be charged against revenue from the sale of electricity. When Petitioner made the contract with respondent, steam was a waste by-product. Whatever it might receive from respondent for steam was all profit.

In such circumstances, petitioner made the contract at issue. Therein, respondent agreed, for twenty-five years, to buy from petitioner all of its requirements of electricity, water, steam and compressed air. Petitioner therein

agreed to furnish the same. As to electricity, petitioner expressly reserved the power to alter the rates. It reserved no such power as to the contract rates for the other services. For ten years, this contract was duly performed by both parties. Petitioner then attempted to increase the rates for water, steam and compressed air above the contract rates. This litigation followed and petitioner now contends that its officers had no power to make this contract. (Pet. p. 16)

4. *Petitioner had plenary power to fix the steam and water rates by contract.* When the state went into the utility business, the Legislature might, itself, have established the rates. It did not do so. The Legislature established certain standards for the rates and charges and left to petitioner complete discretion in the selection of methods to be followed to achieve such objective. (82 O. S. 868).

The original bonded indebtedness of $15,000,000.00 had been increased to $25,000,000.00 (Appendix 10), when contract with respondent was made. An additional $25,000,000.00 was apparently sold and became an indebtedness in 1960. (R. 58). Since then, the bonded indebtedness has been increased to $110,000,000.00. ((Appendix 12) The state never guaranteed the payment of these bonds, nor did it guarantee that the rates and charges to be fixed by petitioner would be sufficient to meet the bonded indebtedness. In fact, the only pledge by the Legislature to the bond holders was (last paragraph 82 O. S. 868, Appendix 8):

". . . that the State will not limit or alter the power hereby vested in the District to establish and collect such fees and charges. . . ."

Notwithstanding the tremendous variation in the amounts necessary for operation and maintenance of additional facilities, and to retire bonds in ever increasing amounts, the Legislature has made no change in the authority given to petitioner. What methods petitioner should select to obtain adequate revenues were left exclusively to the choice of petitioner. What classification petitioner should adopt to impose high base rates on industry, low rates on cities and still different rates for R.E.A. electric coops or other utilities, or what means and methods petitioner might adopt to obtain new customers and increase its revenues were at all times matters left in the unrestricted discretion of petitioner. There is no statutory requirement that the rates can be changed on 60 days notice. This is an administrative practice adopted by petitioner. Whether there should be base rates and surcharges, demand charges and monthly minimum payments were all left to petitioner as being best qualified to select the methods to attain the Legislative objectives. With all of the amendments that have been made to the original Act, at no time has the Legislature seen fit to impose any restriction on petitioner's choice of such methods. Petitioner had ample power to insert in any contract the right to alter the contract rates as to one or more of its separate services. It likewise had ample power not to insert such reservations in any contract, or as to any particular srvices.

5. *The contract rates are still binding.* Petitioner apparently admits the contract was valid when executed. We are at loss to understand petitioner's statement (Petition 15, last paragraph) that

> "It contends that the contract rates remained valid at all times until that time *when such rates were no longer adequate to meet the statutory requirements of the Act.* Precisely at that time petitioner had a duty under the statute to make appropriate changes to bring the rates into line with the statutory mandate."

There is no such provision in the statute. A contract binding when executed does not suddenly lose its validity because of one party's need for greater revenue. The authority of petitioner's officers and agents to establish these complicated rates is given by statute. They exercised their discretion. Both parties agreed on the contract rates. They were valid when made. Neither by statute or otherwise, did petitioner have any right to breach the contract.

6. *Petitioner's power to fix rates has been correctly upheld as a matter of statutory construction.* As to petitioner's administrative construction of its powers to fix rates for a definite term, we cannot improve upon the concise language of the Court of Appeals (352 F. 2d 131, l. c. 135, last three paragraphs). To these long years of petitioner's own construction of its power to contract, and to the long years of legislative acquiescence therein, we can now add judicial construction. Both the trial court and the Court of Appeals heard every argument that petitioner now advances. Both courts, without dis-

sent, upheld petitioner's power to make the contract and found petitioner is bound thereby.

In any event, the Supreme Court of Oklahoma has upheld the power of petitioner to enter into a contract fixing rates and expressly answered an argument similar to petitioner's contention that such rates are beyond review. See *Petition of Grand River Dam Authority*, 320 P. 2d 706. In upholding the contract, the Oklahoma Supreme Court said: (emphasis supplied)

> "In the instant case, the Legislature has outlined the policy of the state, and has delegated the authority to contract to the applicant herein.
>
> * * * * * * *
>
> "The wisdom or advisability of making such a contract has had no part in our consideration of its *legality.* Our lack of business experience and capacity in the field of large hydro electric installations precludes an expression of our opinion. *The decision has been made by the Legislature and its duly authorized representatives to whom the power was delegated.*"

7. *There is no unjust discrimination.* Petitioner claims (Pet. p. 16) that the result of the opinion of the Court of Appeals is to force petitioner to maintain discriminatory rates. We do not understand that differences in rates are objectionable when there is a legal basis for classification.

If petitioner can find among its customers an industry which hazarded substantial capital to buy an industrial site from petitioner; which constructed a manufacturing plant thereon in trust and confidence that peti-

tioner would be able to operate its steam generating plant successfully; which agreed to buy and pay for water at fixed rates with monthly minimums when petitioner had no market therefor; which agreed to buy and pay for steam which petitioner had to produce, but which was a waste by-product for which it had no customer or use,—then let petitioner furnish water and steam to that customer at the same rates specified in respondent's contract. It can scarcely be doubted that among the actual facts, petitioner can find good grounds for separate classification of such a customer.

We do, however, resent petitioner's attempt to prejudice this court by its innuendo (Pet. p. 16) that its customers of electricity

> ". . . must unfairly bear the burden of its (petitioner's) losses in furnishing water, steam and air to respondent."

Losses don't result without proof that costs exceed revenue. Nowhere in the evidence is there any statement of the distribution of petitioner's total costs among its separate sales of electricity, water, steam and compressed air. There is not one word of evidence that water, steam and air have been furnished to respondent at any loss whatever.

D. PETITIONER'S REBUTTAL OF IMPLIED ADMISSIONS IS CONTRARY TO THE FACTS AND WITHOUT SUPPORT.

1. ***There is no admission that apart from contract, the petitioner has any power to alter contract rates.*** Petitioner contends (Pet. p. 14) that the parties,—includ-

ing respondent—recognized that petitioner had a duty to change all of its rates. We can impute no legal significance to the word "recognized" unless petitioner means that in some manner, this constitutes an admission against interest by respondent. The contract provision (R. 9, paragraph 16) to which petitioner alludes, expressly provides that electric rates are subject to change subject to the restrictions therein provided. Since the contract contains no similar reservation of power to alter rates for water and steam, it would seem reasonable to construe the contract as meaning that these rate schedules shall not be subject to change.

This contention that the express contract provision that electric rates are "subject to change" constitutes an implied admission that contrary to the contract, the rates for the other services are likewise subject to change, would seem a complete perversion of the contract and quite contrary to the intent of the parties. No such admission can be inferred.

2. *There is no admission from failure to sue.* In footnote #4, (Pet. p. 14), petitioner further contends that respondent's failure to question the increased rates for electricity is an admission by respondent that petitioner's revenues had become insufficient for statutory purposes. It is perhaps possible that under some circumstances, if a party has two causes of action against another, and sues on only one, the failure to sue on the other cause of action might be deemed some sort of admission. No such circumstances are present here. Respondent sued on a written contract, the breach of which

was admitted by petitioner. There could be no denial of the facts, only an attempted confession and avoidance. As to a suit based on electric rates, however, the contract expressly gave petitioner power, under particular circumstances, to change the rates. To have sued petitioner for raising those rates would, therefore, have been an entirely different law suit. It would have involved a protracted and costly investigation of all petitioner's records for the last four or five years. It would have involved a lengthy trial with expert testimony on all of the complex ramifications of a rate regulation suit. We contrast with such an action involving all issues of a complicated rate structure, the simple proposition in this law suit, that petitioner is bound by its written contract. The differences are glaring. It is obvious that respondent's failure to institute, or delay in instituting, litigation as to rates for electricity, cannot possibly be construed as an admission of any kind.

PROPOSITION III

PETITIONER'S FOREBODINGS AS TO THE CONSEQUENCES OF THE DECISION ARE UNWARRANTED.

A. THE DECISION IS TOO LIMITED IN SCOPE TO THREATEN IMPENDING DISASTER.

1. *Classification of Consequences.* All of petitioner's gloomy forecasts of the consequences of the decision and ruling (Pet. pp. 7, 8, 9 and 16) relate to the effect of the decision, either as to petitioner's debt structure or its rate structure. We shall attempt to put these fears in a realistic perspective.

2. *The ruling relates only to revenues for two accounts.* Petitioner shows five different accounts under its "Requirements" (R. 58), the first three of which are entitled "Operation and Maintenance", "Debt Service" and "Debt Service Reserve Fund." None of these accounts is involved in this proceeding. The ruling does not impair petitioner's duty to establish the remaining two accounts, ("Contingency (Emergency) Fund", and "Depreciation"). It merely "notes" that the statute (not the court), requires them to be established out of excess revenues. Nothing else is involved. This designation relating only to the revenues for two authorized accounts can hardly imperil (Pet. pp. 7 & 16) the economic and industrial future of all of Northeastern Oklahoma.

B. PETITIONER'S DEBT STRUCTURE IS NOT IMPERILED.

If, contrary to the ruling of the Court of Appeals, petitioner has legal authority to establish its depreciation and emergency accounts, not out of excess revenues as provided by statute, but under a bond indenture agreement, then its right so to do should be established in some proper proceeding in which the validity of its bond indenture may be determined. It cannot be adjudicated in this case, for want of necessary parties and certiorari is, therefore, not the proper remedy. Petitioner is not without remedy, in a proper proceeding, to obtain that adjudication.

Under Oklahoma law, 12 O. S. 1651 to 1657 (Appendix 4), petitioner may obtain in the District Court a declaratory judgment of its rights and powers. If, in petitioner's opinion, such a proceeding would be too slow to avert catastrophe, then petitioner may institute an original action in the Supreme Court of the State of Oklahoma. 82 O. S. 882 (Appendix 9) provides in part:

> "The District is authorized . . . to file . . . a petition for a judgment determining the validity of any proposed contract or action arising from the exercise of any of the powers, rights, privileges and functions conferred upon the District under this Act; and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine each such application or petition. It shall be the duty of the court to give such applications and petitions precedence over the other civil business of the court except *habeas corpus* proceedings, and to consider and

pass upon the applications and petitions and any protests which may be filed thereto as speedily as possible."

Petitioner resorted to this procedure in *Petition of Grand River Dam Authority*, 320 P. 2d 706. In that case, the proposed contract was dated August 5, 1957. The Oklahoma Supreme Court's decision followed on December 17, 1957, with all rehearings denied by January 28, 1958. It would therefore seem reasonable to anticipate that in less time than required even to ascertain *whether* certiorari would issue in this case, the petitioner could have obtained a final decision by the Oklahoma Supreme Court, binding on the particular parties whose rights are involved, namely, petitioner and its bondholders.

If the Court of Appeals was correct, petitioner is not entitled to any certiorari. If the ruling was erroneous, certiorari can afford no relief for want of necessary parties. Petitioner has adequate remedies under the above statutes. Its fears as to its debt structure are groundless.

C. PETITIONER'S RATE STRUCTURE IS NOT ENDANGERED.

Petitioner (Pet. p. 16) claims that the opinion "has jeopardized petitioner's entire rate structure . . ." The only alleged grounds are matters entirely outside of the record. Not even in its appendix does petitioner furnish specific references thereto. Obviously, respondent cannot answer claims so presented, nor is answer necessary.

It is common knowledge that in the utility business, no rate schedule balances to the penny the exact require-

ments for any given period. A deficit in one month, may become a surplus the next. In its business, it appears (R. 64), that petitioner has classified its customers as cities, electric coops, other utilities, industries, and others. Petitioner sells electric energy, water, treated water, steam and compressed air. It has base rates, surcharges, demand charges, and minimum monthly payments. How petitioner may justify its discrimination in rates among the various classes of its customers, or how petitioner handles the innumerable conflicting problems of cost accounting, to determine its different base rates for electricity, water or steam, is not in issue. In accordance with its long standing administrative construction of the Act. (Affidavit of Mr. Rohmiller, R 62-63, in evidence by stipulation), petitioner has uniformly reserved the power to alter its rates on sixty days notice in all contracts and as to all products since 1952. If, in any one quarter, or year, or other period, its rate schedule produces revenues in excess of its other authorized statutory requirements, the ruling as to the depreciation and emergency accounts presents no problem. If in any such period, its rate schedule fails to produce adequate revenue, then petitioner need only give sixty days notice of a new rate schedule, which it would deem adequate for the purpose.

Except only as petitioner may be bound by written contract prior to 1952, petitioner has complete power to alter its entire rate structure as to all classes of customers, and all classes of service, at any time on a sixty days notice. As to its rate structure, we suggest that petitioner can meet the shadowy future with complete confidence

in its contractually reserved rights. We express the hope that the Court will not be unduly perturbed by repetitious recitals of fanciful fears when such an effective remedy of self help is immediately at hand.

CONCLUSION

Certiorari should not issue because the decision and ruling of the Court of Appeals were both correct. Nothing in the constitution or in the statute limited petitioner's power or prohibited petitioner from fixing rates by contract. The Court of Appeals correctly applied Oklahoma rules of statutory construction. If correct, certiorari should be denied. If obiter dictum, certiorari will not issue for its correction.

If certiorari were granted, no effective adjudication could result. The exaggerated fears of petitioners as to the dire consequences of the decision are unwarranted, and any consequence can be completely averted by statutory remedies available to petitioner.

Respectfully submitted

Remington Rogers,
Counsel for respondent

1311 Petroleum Club Building
Tulsa, Oklahoma—74119

Of Counsel:
Gerard K. Donovan
Dan A. Rogers

1311 Petroleum Club Building
Tulsa, Oklahoma — 74119

APPENDIX

APPENDIX 1.

OKLAHOMA CONSTITUTION

"Article 2, Sec. 31: State Engagement in Occupation or Business. The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited, except that the State shall not engage in agriculture for any other than educational and scientific purposes and for the support of its penal, charitable, and educational institutions."

APPENDIX 2

OKLAHOMA CONSTITUTION, CORPORATION COMMISSION

Article 9, Sec. 18b: *Company defined.* "As used in this article, the term 'Company' shall include associations and joint stock companies having any power or privileges not possessed by individuals, and include all corporations except municipal corporations and public institutions owned or controlled by the State."

APPENDIX 3.

OKLAHOMA CONSTITUTION ARTICLE XVIII, SEC. 7.

This entire article is headed "Municipal Corporations". All of the first six sections of the article deal exclusively with the creation and powers of such corporations. Petitioner quoted only the last sentence of Article 7. To put it in proper perspective, we quote the entire section.

"7. *Control and regulation not divested—Surrender of powers—Exclusive franchises*: No grant, extension or renewal of any franchise or other use of the

streets, alleys, or other public grounds or ways of any municipality, shall divest the State, or any of its subordinate subdivisions, of their control and regulation of such use and enjoyment.

"Nor shall the power to regulate the charges for public services be surrendered; and no exclusive franchise shall ever be granted."

APPENDIX 4

12 O. S., Chapter 34 "Declaratory Judgments" Sec. 1651, 1654 and 1655.

"§1651. Determination of rights, status or other legal relations. Exceptions.

District and Superior Courts may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any deed, contract, trust or other instrument or agreement or of any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed, except that no such declaration shall be made concerning liability or nonliability for damages on account of alleged tortious injuries to persons or to property either before or after judgment or for compensation alleged to be due under workmen's compensation laws for injuries to persons or concerning obligations alleged to arise under policies of insurance covering liability or indemnity against liability for such injuries. The determination may be made either before or after there has been a breach of any legal duty or obligation,

and it may be either affirmative or negative in form and effect; provided, however, that a court may refuse to make such determination where the judgment, if rendered would not terminate the controversy, or some part thereof, giving rise to the proceeding.

"§1654. Effect of determination—Review.

Any determination of rights, status, or other legal relations shall have the force and effect of a final judgment, and it shall be reviewable in the same manner as other judgments.

"§1655. Further relief.

"Further relief based upon a determination of rights, status, or other legal relations may be granted whenever such relief becomes necessary and proper after the determination has been made. Application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined to show cause why the further relief should not be granted forthwith upon reasonable notice prescribed by the court in its order. Laws 1961, p. 59, §5.

APPENDIX 5. —

Corporation Commission, 17 O.S. Sections 151 and 152.

"§151. Public Utility — Definition — Washington County, special provisions relating to

"The term "Public Utility" as used in this Act shall be taken to mean and include every corporation, association, company, individuals, their trustees,

lessees, or receivers, successors or assigns, except as hereinafter provided, and except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use or may supply any commodity to be furnished to the public.

(Paragraphs not pertinent omitted.)

"§152. Commission's jurisdiction over public utilities.

"The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this state, and with the orders of the Commission. Laws 1913, ch. 93, p. 150, § 2."

APPENDIX 6.

82 O. S. 861. Grand River Dam Authority, a body politic.

"There is hereby created within the State of Oklahoma a conservation and reclamation district to

be known as "Grand River Dam Authority" (hereinafter called the District), and consisting of that part of the State of Oklahoma, which is included within the boundaries of the counties of Adair, Cherokee, Craig, Delaware, Mayes, Muskogee, Ottawa, Osage, Tulsa, Wagoner, Sequoyah, McIntosh, Creek, Okmulgee and Rogers. Such district shall be, and is hereby declared to be a governmental agency, body politic and corporate, with powers of government and with the authority to exercise the rights, privileges and functions hereinafter specified, including the control, storing, preservation and distribution of the waters of the Grand River and its tributaries, for irrigation, power and other useful purposes and reclamation and irrigation of arid, semi-arid and other lands needing irrigation, and the conservation and development of the forests, water and hydroelectric power of the State of Oklahoma.

"Nothing in this Act, or in any other Act or law contained, however, shall be construed as authorizing the District to levy or collect taxes or assessments, or to create any indebtedness payable out of the taxes or assesments, or in any manner to pledge the credit of the State of Oklahoma, or any subdivision thereof.

(paragraphs not pertinent omitted)

APPENDIX 7.

82 O. S. 862. Grand River Dam Authority, powers.

§862. Powers, rights and privileges of district.

"The District shall have and is hereby authorized to exercise the following powers, right and privileges

(paragraphs not pertinent omitted)

"(n) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this Act; . . ."

APPENDIX 8.

82 O. S. §868. Grand River Dam Authority, power to fix rates.

"§868. Board authorized to fix and collect rates and charges—State's power to fix charges not to impair contracts.

"The Board shall establish and collect rates and other charges for the sale or use of water, water connections, power, electric energy or other services sold, furnished, or supplied by the District which fees and charges shall be reasonable and nondiscriminatory and sufficient to produce revenue adequate:

(a) To pay all expenses necessary to the operation and maintenance of the properties and facilities of the District;

(b) To pay the interest on and principal of all bonds issued under this Act when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds, and payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or with any person in their behalf. Out of the revenues which

may be received in excess of those required for the purposes specified in sub-paragraphs (a), (b), (c) and (d), above, the Board shall establish a reasonable depreciation and emergency fund and retire (by purchase and cancellation or redemption) bonds issued under this Act, or apply the same to any corporate purpose. It is the intention of this Act that the rates and charges of the District shall not be in excess of what may be necessary to fulfill the obligations imposed upon it by this Act.

"Nothing herein shall be construed as depriving the State of Oklahoma of its power to regulate and control fees and/or charges to be collected for the use of water, water connections, power, electric energy, or other services, provided, that the State of Oklahoma does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the State will not limit or alter the power hereby vested in the District to establish and collect such fees and charges as will produce revenues sufficient to pay the items specified in sub-paragraphs (a), (b), (c) and (d) of this Section 8, or in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders and all other obligations of the District in connection with such bonds are fully met and discharged. Laws 1935, p. 354 §8."

APPENDIX 9.

82 O. S. 882. Grand River Dam Authority, Petition to Oklahoma Supreme Court.

§882. Judicial determination by Supreme Court of Validity of bonds, contracts and other acts — Notice.

"The District is authorized in its discretion to file an application with the Supreme Court of Oklahoma for approval by said court of any bonds to be issued under this Act, or to file a petition for a judgment determining the validity of any proposed contract or action arising from the exercise of any of the powers, rights, privileges and functions conferred upon the District under this act; and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine each such application or petition. It shall be the duty of the court to give such applications and petitions precedence over the other civil business of the court except habeas corpus proceedings, and to consider and pass upon the applications and petitions and any protests which may be filed thereto as speedily as possible.

(sentences not pertinent omitted) and concluding

* * * * * * *

". . . and any declaratory judgment on any contract or action of the District entered pursuant to this section shall have the force and effect of a final judgment or decree. Laws 1957, p. 568, §4."

APPENDIX 10.

1949 Session Laws, Senate Bill #71 amending 82 O. S. 861, *et sequente.*

(Omitting re-enacted sections not here pertinent.)

Section 4 amends 82 O. S. 870 to read, in part as follows:

Section 870.

"The District shall have power and is hereby authorized to issue from time to time, bonds for corporate purposes, of not to exceed Twenty-Five Million Dollars ($25,000,000.00) and without limitation of the generality of the powers, rights and privileges heretofore granted, for acquiring a steam generating plant and related facilities located at the Oklahoma Ordnance Works near Choteau, Oklahoma, and to extend, improve and reconstruct the same. The District shall have power and is hereby authorized to issue additional bonds of not to exceed Twenty-Five Million Dollars ($25,000,000.00) which bonds may be issued from time to time as the need (thereof) arises and in such amounts as are deemed necessary, for constructing, installing or acquiring dams and/or hydroelectric power plants at Markham's Ferry and/or Fort Gibson, and for acquiring transmission lines, substations, and for acquiring additions and improvements to and extensions of the present existing facilities of the District, and the acquisition of lands and rights of way for such use as is, or may be, authorized by law, for construction or replacement and repair of any dams, plants or other facilities of the District, and to enable it to finance in cooperation with any other agency of government, the development and utilization of the water resources and rights in waters vested in said district for such purposes as are, or may be, authorized by the laws of Oklahoma, and for financing and refinancing present outstanding obligations of the District, including the payment of any claims, charges or interest on bonds required to be paid.

(Omitting sentences not pertinent).

". . . provided that out of the issue of any bonds hereinabove authorized the Authority shall not use or apply more than Seven Million Dollars ($7,000,000.00) of the proceeds of such bonds for the acquisition or additions to that certain steam driven electric generating plant located at and constituting a part of the Oklahoma Ordnance Works near Choteau."

APPENDIX 11.

Oklahoma Session Laws 1955, page 474, Sections 1, 2 and 3.

This Act amended 82 O. S. 863, as to the Directors of the G.R.D.A.; 82 O. S. 866, as to its office, accounts, audits and public inspection, and 82 O. S. 874 prohibiting any mortgage, sale or lease of petitioner's property.

Since there is no dispute, the amendments are noted, but are not reproduced herein.

APPENDIX 12.

Grand River Dam Authority.

Oklahoma Session Laws 1957, page 562, Sections 1, 2, 3 and 4 and joint resolution, laws of 1957, page 656, Sections 1 to 4.

By these sections in 1957, the Oklahoma Legislature amended the Grand River Dam Authority Act, Title 82, Sections 861, 862 and 865. It also amended Section 870 in 82 O. S. 870, reading in part:

"§870. District authorized to issue bonds, Provisions of resolution or agreement — Approval by Attorney

General — Registration — Acquisition of plant from United States. —

"The District shall have power and is hereby authorized to issue from time to time, as the need thereof arises, bonds for corporate purposes of not to exceed One Hundred Ten Million Dollars ($110,000,000.00), . . ."

The 1957 Legislature also amended 82 O. S. 874, omitted because not pertinent to this case. It also created an advisory committee to review proposed contracts with privately owned public utilities. 82 O. S. Sections 883-886, inclusive. Contents not material to this action, but facts of amendment noted.